



June 18, 2003

Via Facsimile

Liane Randolph, Chair  
Fair Political Practices Commission  
428 J Street, Suite 620  
Sacramento, CA 95814

Re: Possible Integration of Government Code Section 1090 *et. seq* and the Political Reform Act

Dear Chair Randolph:

The League of California Cities City Attorneys FPPC Committee would like to add its voice to the chorus interested in the study of the possible integration of Government Code Section 1090 into the Political Reform Act. While "integration" may not be the proper terminology, the overall goal of providing the FPPC with some oversight authority to implement and/or interpret the Act is of an abiding interest to municipalities throughout the State of California.

As you know, in 2001, a loosely formed group of government lawyers which included members of your staff, the Attorney General's Office, representatives from CalPERS, the state legislature and the city attorneys met to discuss the same issue. Good intentions aside, the effort faltered.

It is now our understanding that you plan to propose to the full Commission that some FPPC resources be assigned to study this issue and, at a minimum, identify the scope of the project and the workload involved. We understand that even the study of this project will distract Commission staff from other responsibilities, however, the regulated community are at the ready to assist in that effort. In addition, we recognize that should the proposal move forward to fruition, that funding resources would have to be made available by the state legislature to allow the FPPC to fulfill any responsibilities in this regard.

Thank you again for your attention and your interest in having the Commission take a leadership role in this important matter. It is insufficient to say that the regulated community would be significantly benefited if same could be accomplished.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael D. Martello", with a stylized flourish at the end.

Michael D. Martello  
City Attorney

cc: CC, CM, FPPC Committee, Marte Castenos, CalPERS, Ted Prim, Attorney General's Office



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June 18, 2003

Liane Randolph, Chair  
Fair Political Practices Commission  
428 J Street, Suite 450  
Sacramento, CA 95814

Re: Government Code Section 1090

Dear Ms. Randolph:

I am writing you on behalf of the California Public Employees' Retirement System (CalPERS). CalPERS requests that the Fair Political Practices Commission (FPPC) consider supporting a legislative amendment to address Recommendations 16 and 17 of the McPherson Report.

Attachment 1 contains the relevant portions of the McPherson Report and Recommendations 16 and 17 are restated here:

Recommendation 16: All state conflict of interest statutes should be consolidated into a single code or body of law to be interpreted and enforced consistently by a single state agency.

Recommendation 17: All local conflict of interest codes should be centralized and consolidated under the authority of a single state agency – the FPPC.

CalPERS believes that all state conflict-of-interest statutes should be consolidated, as the McPherson report suggests, "presumably under the Political Reform Act." Consolidation under the Political Reform Act will allow all public officials to receive better, timely, and conclusive advice regarding conflict situations.

Currently, a public official who writes the FPPC for conflict advice, as opposed to a campaign question, often only gets half an answer. This is because many conflict questions implicate code sections outside the jurisdiction of the FPPC; e.g., Government Code section 1090 and Public Contract Code section 10410. This gap could be filled if, as the McPherson Commission recommends, the other state conflict laws were consolidated under the Political Reform Act.

CalPERS has struggled for years to obtain guidance on many of the provisions of the conflict statutes outside of the Political Reform Act. That is why CalPERS instructed its Legal Office in late 1999 to put together a task force to explore possible solutions to,

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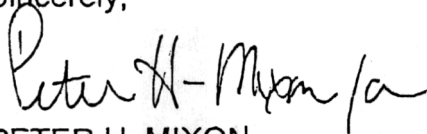
among other things,<sup>1</sup> the problem of receiving timely and comprehensive conflict advice under Government Code section 1090.

The Legal Office was successful in putting together a well-qualified and enthusiastic group of public and private attorneys who shared many of CalPERS' concerns. The entire task force supported moving Government Code section 1090 under the jurisdiction of the FPPC or otherwise allowing the FPPC to provide advice and pass regulations interpreting Government Code section 1090. In fact, most of the effort of the task force was spent discussing the merits of a wholesale move of Government Code section 1090 to the Political Reform Act as opposed to a merger of Government Code section 1090 into the framework of Government Code section 87100 et seq.

While the work of the task force and subcommittee was productive and identified many of the issues involved in consolidating the conflict laws under the Political Reform Act, this project needs the input, leadership, and active support of the FPPC to move forward. We therefore request that the FPPC consider sponsoring a legislative amendment that would implement Recommendations 16 and 17.

If you have any questions, please do not hesitate to contact me or staff counsel Marte Castaños.

Sincerely,



PETER H. MIXON  
General Counsel

Attachment

cc: Fred Buenrostro, Chief Executive Officer – CalPERS  
Mark Krausse, Executive Director – FPPC  
Luisa Menchaca, General Counsel – FPPC  
Marte Castaños, Staff Counsel – CalPERS

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<sup>1</sup> Specifically, the CalPERS Board of Administration instructed the Legal Office to address the following problems with section 1090 as applied:

- (a) The Attorney General's Office's "conclusive presumption" that Board members participate in the making of all contracts under their jurisdiction.
- (b) No exception for loans from a commercial lending institution on terms similar to the public.
- (c) No definition of "financial interest."
- (d) No user-friendly advice process to provide guidance to public officials.
- (e) No regulatory process to clarify uncertainties in the statute.

public input including specifically with respect to the conflict of interest provisions contained in the Political Reform Act.

Second, the Bipartisan Commission's Conflict of Interest Sub-Committee (comprised of two former public officials, a former FPPC Chairman, and a former FPPC Commissioner) studied conflict of interest issues, including all recommendations and proposals submitted by the public (in writing and in testimony) and prepared a Report on Conflicts of Interest for the consideration of the Bipartisan Commission.

Although, as stated above, there is certainly a strong sense that the conflict of interest provisions of the Political Reform Act are unnecessarily and dangerously complicated, the Bipartisan Commission's study and analysis of these provisions was substantially limited by two factors. First, the Bipartisan Commission recognized both that the FPPC is currently undergoing a far-ranging regulatory overhaul of the conflict of interest provisions of the Political Reform Act, and that the Bipartisan Commission needed to respect and defer to the FPPC in this regard. Second, the Bipartisan Commission also recognized that given its own time constraints and given the per-

ceived focus of the Commission's enabling legislation on issues of disclosure and enforcement, the Commission needed to devote more of its time and efforts on the latter two areas.

The Bipartisan Commission nonetheless identified numerous reforms which it believes would—if implemented—make the conflict of interest provisions under the Act work more efficiently and effectively. The Bipartisan Commission believes that these reforms are necessary to ensure that the original purposes of the Political Reform Act are carried out without unduly discouraging citizens from participating in the political process due to confusing and unneeded regulatory requirements.

#### Specific Recommendations

The following are the Bipartisan Commission's specific Recommendations with respect to the conflict of interest provisions contained in the Political Reform Act, along with the Findings which support the Recommendations. The Bipartisan Commission believes that these Recommendations are worthy of serious consideration by the Legislature and the Fair Political Practices Commission.

#### Consolidation and Centralization of Conflict Rules

The Bipartisan Commission believes that for the sake of clarity and consistency in interpretation the various state and local conflict of interest rules should be consolidated and centralized under the authority of a single body, the FPPC.

#### RECOMMENDATION NO. 16

##### Consolidation of State Conflict Codes Under One Agency

All state conflict of interest statutes should be consolidated into a single code or body of law to be interpreted and enforced consistently by a single state agency.

#### Findings Supporting Recommendation

Based upon the discussions and deliberations of the Commission, the Bipartisan Commission finds that the existence of multiple conflict of interest provisions sprinkled throughout various Codes creates unnecessary confusion in the minds of public officials who strive to obey the law but who often have no idea what Code to review or whom to ask for advice.

For example, a public official wondering whether he or she has a conflict of interest in a particular governmental decision must individually consider the Political Reform Act, Government Code Section 1090, the conflict of

The Bipartisan Commission therefore recommends that the Legislature consolidate all conflicts of interest laws into one Code, presumably the Political Reform Act, to be interpreted and enforced consistently by a single authority.

back to the Political Reform Act's adoption by the voters in 1974, decentralizes responsibility for the formulation and adoption of the conflicts of interest codes to individual jurisdictions and agencies. Although the FPPC is empowered, pursuant to Government Code section 87312, to provide technical assistance to agencies in the preparation of conflict of interest codes, the FPPC has no authority to direct these efforts in a standard and uniform manner. The existing decentralization can lead to a myriad of inconsistent results.

For example, one local government entity may designate a public defender as a position with decision-making authority, while another entity may not. Moreover, the FPPC's present lack of authority to examine and direct the conflict of interest efforts of local government agencies undermines the role of the FPPC, which is the one agency with the technical expertise to administer this highly technical area of law.

The Bipartisan Commission urges the Legislature to consider legislation to give the FPPC more authority to ensure that all conflict of interest codes for all agencies and all jurisdictions are properly regulated and administered.

The Bipartisan Commission therefore recommends that the Legislature consolidate all conflicts of interest laws into one Code, presumably the Political Reform Act, to be interpreted and enforced consistently by a single authority.

interest provisions of the Public Contracts Code, and a number of other agency-specific and local conflict of interest provisions. These provisions are administered or enforced by different agencies such as the FPPC, the California Department of Justice, the courts, and numerous local agencies. The public official must determine for himself or herself what agency to approach for an answer to a conflict of interest question. For example, a question about the Political Reform Act conflict of interest rules must be addressed to the FPPC while a question about a Section 1090 contract issue must be addressed to the Department of Justice.

#### RECOMMENDATION NO. 17 Centralization of Local Conflict Rules Under the FPPC

All local conflict of interest codes should be centralized and consolidated under the authority of a single state agency—the FPPC.

**Findings Supporting Recommendation**  
Based upon the discussions and deliberations of the Commission, the Bipartisan Commission finds that the Political Reform Act's conflict of interest provisions (Government Code Section 87300 et seq.) should be amended to centralize and consolidate all state and local conflicts of interest codes under the authority of a single state agency, the FPPC. The current concept, which dates